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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 419

DANIEL K. CATLIN, FREDERICK PITZMAN AND LEWIS M. RUMSEY, JR., AS TRUSTEES UNDER DEED DATED FEBRUARY 1, 1921, ETC., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 47–52) is reported at 142 F. 2d 781. The District Court wrote no opinion.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 2, 1944 (R. 52). The petition

for a writ of certiorari was filed on September 1, 1944, and was granted on October 23, 1944 (R. 60). The jurisdiction of this Court rests on section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a judgment on a declaration of taking and a subsequent order denying a motion to vacate such a judgment and dismiss the condemnation petition are final and appealable.

STATUTES INVOLVED

Section 128 of the Judicial Code, as amended (28 U. S. C. 225 (a)), the Declaration of Taking Act of February 26, 1931 (40 U. S. C. Secs. 258a–258e), and the War Purposes Act of 1917 as amended (50 U. S. C. 171), are printed in the Appendix, *infra*, pp. 21–25.

STATEMENT

The United States on March 31, 1942, instituted condemnation proceedings under the War Purposes Act of 1917[1] to acquire 1,113 acres of land in Madison County, Illinois, "for use in the establishment of the Granite City Engineer Branch Depot, Granite City, Illinois" (R. 2–11, 33). The petition for condemnation alleged that it was being filed at the direction of the Attorney General,

[1] Act of August 18, 1890, 26 Stat. 316, as amended by the Acts of July 2, 1917, 40 Stat. 241, and April 11, 1918, 40 Stat. 518 (50 U. S. C. 171).

pursuant to the request of the Secretary of War (R. 2, 3); that the Act of August 18, 1890, as amended in 1917 and 1918 (50 U. S. C. 171), authorized the Secretary to cause proceedings to be instituted to condemn land "needed for the site, location, construction and prosecution of works for fortifications, coast defenses, military training camps," etc. (R. 3); that upon the filing of a petition to acquire such lands in time of war "immediate possession thereof may be taken" (R. 3); that funds for the acquisition of lands needed "for the prosecution of military affairs of the United States in connection with the present emergency" had been appropriated by the Act of December 17, 1941, 55 Stat. 810, 812 (R. 3); and that the apparent owners of the land needed for "the works hereinabove referred to" included the Cool Land Syndicate (R. 4). The petition concluded with a prayer that the court enter an order of immediate possession and that just compensation be ascertained (R. 4–5). The court on the same day that the petition was filed entered an order of immediate possession. The War Department thereupon went into possession of the property and proceeded with the construction of an Army Engineer Branch Depot (R. 47).

Thereafter, as the necessary appraisal data and title information were obtained, declarations of taking were signed by the Secretary of War and filed in court, pursuant to the Declaration of Tak-

ing Act of February 26, 1931 (40 U. S. C. 258a). Included in Declaration of Taking No. 1, filed November 12, 1942, was Tract ED–7, containing 318.64 acres, for which $43,579 was deposited in court as estimated compensation. (R. 13, 16, 21.) The Cool Land Syndicate was named as the purported owner (R. 16). The court on November 12, 1942, upon motion of the United States Attorney, entered a "judgment" on this declaration of taking, decreeing that title to the tracts therein described had vested in the United States upon the filing of the declaration of taking and that "the right to just compensation for the same is now vested in the persons entitled thereto." This judgment further provided that "this cause is held open for such further and other orders, judgments and decrees as may be necessary and proper in the premises." (R. 23–26.)

On October 7, 1943, the petitioners, as trustees of the Cool Land Syndicate, filed a motion asking the court to vacate the judgment on this declaration of taking and to dismiss the petition in condemnation, insofar as it related to Tract ED–7, on the ground that the requisite jurisdictional facts and statutory authority had not been sufficiently alleged in the condemnation petition (R. 29–31).

Although of the opinion that the original petition was adequate, the Government asked and obtained leave to amend the petition so as to make the Secretary of War's letter of March 26, 1942,

to the Attorney General, a part thereof (R. 31–34). Petitioners thereupon filed an amended motion to vacate and to dismiss, which was based solely upon the ground that, it appearing from the Secretary's letter that the land was to be used for the establishment of an engineer depot and "related military purposes," the proceeding did not involve a condemnation for one of the purposes specified in the War Purposes Act of 1917 (R. 34–36). The amended motion was denied on November 30, 1943 (R. 36).

Petitioners, on December 9, 1943, took an appeal to the Circuit Court of Appeals for the Seventh Circuit from the "judgment" on the declaration of taking and from the subsequent order denying their motion to dismiss the petition and to vacate that judgment. That court held that the orders attacked were not final judgments and accordingly dismissed the appeal. (R. 47–52.)

SUMMARY OF ARGUMENT

An appeal does not lie from a "judgment" upon a declaration of taking or the other actions of the trial court in this case, because the jurisdiction of Federal appellate courts is limited to the review of "final decisions" by Section 128 of the Judicial Code, and neither the "judgment" nor the other actions of the court were final. The litigation was not terminated and the amount of compensation to the landowner was not determined. This Court and other Federal courts have fre-

quently held that a judgment in a condemnation proceeding is not reviewable until all the rights, "whether of title or of damages", have been adjudicated. Such has been the holding with respect to the reviewability in this Court of the judgments of state courts which do not conclude the issue of compensation, even when, by statute, they have been appealed to the highest state courts.

The Declaration of Taking Act does not provide for judgments upon declarations, but causes title to vest in the United States immediately upon the filing of a declaration and the deposit of the estimated amount of compensation. "Judgments" are frequently obtained *ex parte*, to advise landowners of the action taken and for title recordation purposes, but such a "judgment" determines nothing that the filing of the declaration, accompanied by the deposit of estimated compensation, has not already concluded. There is no final judgment in such a proceeding other than the final award of compensation.

The Declaration of Taking Act was intended to conclude the landowner with respect to the taking, except as review in connection with the final judgment or non-statutory relief might be had. These remedies afford adequate protection. The validity of such summary procedure has long been settled. The fact that the United States may enter immediately into possession upon the filing of a declaration of taking does not afford a

reason for holding that the "judgment" upon such a declaration is reviewable; for immediate possession may be taken under other procedures and resulted in this case from the filing of the petition and not from the declaration or the "judgment". Accordingly, the rationale of the cases which hold that a "judgment" upon a declaration of taking or its equivalent is reviewable because the landowner should have an opportunity promptly to challenge the possession is unsound.

The Declaration of Taking Act contains ample internal evidence that the only judgment contemplated is the final award of compensation for the property taken. There are strong practical considerations to support the limitation of appeals to such final judgments, since to permit appeals from interlocutory orders would produce considerable delay and expense, as the present proceeding itself indicates.

ARGUMENT

THE JUDGMENT AND ORDER SOUGHT TO BE REVIEWED ARE NOT FINAL AND APPEALABLE

Except in situations not here material, the jurisdiction of the Federal appellate courts is by statute limited to the review of "final decisions" 28 U. S. C. 225 (a). A "final decision" is one that terminates the litigation on the merits and leaves nothing for the trial court to do but execute the judgment in case of affirmance. *St. Louis I. M. &*

S. R. R. Co. v. *Southern Ex. Co.*, 108 U. S. 24, 28; *State of Washington* v. *United States*, 87 F. 2d 421, 433 (C. C. A. 9). Consequently, a condemnation proceeding is ordinarily not reviewable "until after final judgment, disposing of the whole case, and adjudicating all the rights, whether of title or of damages, involved in the litigation. The case is not to be sent up in fragments * * *." *Luxton* v. *North River Bridge Co.*, 147 U. S. 337, 341. Such has been the repeated holding in this Court and the lower Federal courts. *Southern Ry. Co.* v. *Postal Telegraph Co.*, 179 U. S. 641, 643; *Grays Harbor Co.* v. *Coats-Fordney Co.*, 243 U. S. 251, 256; *Washington ex rel. McPherson Bros. Co.* v. *Superior Court*, 274 U. S. 726; *Ornstein* v. *Chesapeake & Ohio Ry. Co.*, 284 U. S. 572; *Dade County, Fla.* v. *United States*, 142 F. 2d 230 (C. C. A. 5); *Turnbull* v. *United States*, 139 F. 2d 126 (C. C. A. 6); cf. *Collins* v. *Miller*, 252 U. S. 364, 370; *United States* v. *Florian*, 312 U. S. 656.

In many States "judgments of condemnation" sustaining the condemnor's right to acquire particular property by condemnation are by statute reviewable in the state courts in advance of the determination of just compensation. But neither state statutes nor the conformity provisions of the Federal condemnation acts abrogate the plain requirements of the Judicial Code limiting review by the Federal courts to "final decisions." *Dieckmann* v. *United States*, 88 F. 2d 902 (C. C. A. 7).

Consequently this Court has refused to review such state court decisions, in advance of a remand for determination of just compensation, "for want of a final judgment." E. g. *Wick* v. *Superior Court,* 278 U. S. 574, 575; *Public Service Co.* v. *Lebanon,* 305 U. S. 558, 671.

Since just compensation for Parcel ED–7 has not yet been determined, it seems clear, under the foregoing authorities, that the judgment and order sought to be reviewed are not final and appealable.

Certainly, the order denying the motion to dismiss the petition was not appealable. Denial of a motion to dismiss the complaint in an ordinary civil action is not immediately reviewable even when the motion is based on jurisdictional grounds. *Roche* v. *Evaporated Milk Assn.,* 319 U. S. 21. And an order denying a motion to dismiss a condemnation petition, even when constitutional objections are raised, cannot be deemed a final judgment. *Dieckmann* v. *United States,* 88 F. 2d 902 (C. C. A. 7). Such a motion is comparable to a demurrer at common law and its denial is not reviewable until a final judgment has been entered. Nor may a litigant, each time he is dissatisfied with a ruling, file a motion to set it aside and, when the motion is denied, prosecute a piece-meal appeal. It is only when a motion to set aside is directed at a judgment which is final that an immediate appeal may be taken. Neither the "judgment" upon the declaration of taking nor the court's denial of the motion to va-

cate it is, we submit, a final judgment or a "final decision" as that term is used in 28 U. S. C. 225 (a). Cf. *Glinski* v. *United States,* 93 F. 2d 418 (C. C. A. 7); *Republic Supply Co. of California v. Richfield Oil Co.,* 74 F. 2d 909, 910 (C. C. A. 9).

The Declaration of Taking Act of 1931 contains no provision requiring the court to enter a judgment or order upon a declaration of taking. The Act provides that "upon the filing of said declaration of taking and of the deposit in the court, * * * title to the said lands * * * shall vest in the United States of America." "Clearly under provisions of the statute, condemnation is effected and title completely vested in the Government by the mere filing of a declaration of taking and a judgment adjudging title in the United States is wholly unnecessary. Such is the statutory mandate." *United States* v. *Sunset Cemetery Co.,* 132 F. 2d 163, 164 (C. C. A. 7); *Dade County, Fla.* v. *United States,* 142 F. 2d 230, 231 (C. C. A. 5). But in the interests of orderly procedure, the Department of Justice has adopted the policy of asking district courts to enter "judgments on the declaration of taking." Most district judges have assented. These "judgments" are obtained, generally *ex parte*, so as to advise the owners of the action that has been taken and for title recordation purposes.

The filing of a proper declaration of taking and the deposit of funds in court—not any judg-

ment or order giving effect to the declaration—vest title to the lands in the United States "in fee simple absolute, or such less estate or interest * * * as is specified in said declaration." The United States then becomes "irrevocably committed to pay the amount ultimately to be awarded as compensation." Declaration of Taking Act, Secs. 1, 5, *infra*, pp. 22, 24. The landowner is therefore concluded with regard to the taking, except as issues remain open for determination in the final judgment in the condemnation proceedings or as injunctive relief may be available. It was the legislative purpose that this should be so, for in the committee reports recommending adoption of the Act it is stated that the Government would "take title immediately, and leave the amount of compensation to be determined by the courts." Decisions of this Court sustaining summary condemnation procedure in the States are cited in the reports.[2] See *North Laramie Land Co.* v. *Hoffman*, 268 U. S. 276, 284; *Joslin Co.* v. *Providence*, 262 U. S. 668, 678; *Bragg* v. *Weaver*, 251 U. S. 57, 62; *Adirondack Railway* v. *New York State*, 176 U. S. 335, 349. The basic authority to condemn land for the purpose to which it is to be devoted is open to judicial inquiry; but

[2] H. Rep. 2086, 71st Cong., 3d sess. This report was adopted by the Senate Committee in S. Rep. 1325 of the same Congress. The act of 1931 was modeled upon Sec. 10 of the District of Columbia condemnation act of 1929 which is explained in similar terms in H. Rep. 1693, 70th Cong., 1st sess. and S. Rep. 1431, 70th Cong., 2d sess.

the quantity of land which is needed "is a legislative [i. e., administratively determinable] and not a judicial question." *United States* v. *Gettsburg Electric Ry.*, 160 U. S. 668, 685.

The fact that a "judgment" upon a declaration of taking absorbs a large measure of finality from the declaration which it supplements is therefore not a reason for holding that it is reviewable. Suggestions to the contrary, contained in cases upon which petitioner relies (Pet. Br. pp. 8–11, discussed *infra*, pp. 14–17) are, we submit, not well founded. Full judicial consideration enters into the determination of the "ultimate award" of compensation (Act of 1931, Sec. 3, *infra*, p. 23), from which an appeal of course lies. Issues going to the validity of the taking of the lands in question have, moreover, been regarded as open to consideration in connection with final judgments under the Declaration of Taking Act and upon appeal from such judgments. *Dade County, Fla.* v. *United States*, 142 F. 2d 230 (C. C. A. 5); *City of Oakland* v. *United States*, 124 F. 2d 959 (C. C. A. 9), certiorari denied, 316 U. S. 679. See *Potomac Electric Power Co.* v. *United States*, 85 F. 2d 243 (App. D. C.), certiorari denied, 299 U. S. 565. The validity of the taking has also been considered upon appeals from judgments of dismissal. *United States* v. *Carey*, 143 F. 2d 445 (C. C. A. 9); *United States* v. *Marin*, 136 F. 2d 388 (C. C. A. 9).

Still more drastic than the procedure under the Declaration of Taking Act is the authority of the Government under its requisitioning and expropriation powers to take possession of property without filing a condemnation proceeding of any kind, leaving the owner to his remedies under the Tucker Act. *United States* v. *North American Co.*, 253 U. S. 330, 333. If there is a valid statute authorizing the taking, an injunction will not issue, since the landowner's statutory right to recover compensation is adequate. *Hurley* v. *Kincaid*, 285 U. S. 95.

The Act contains ample internal evidence that the decree determining the amount of compensation and the other issues which are open until the close of a condemnation proceeding is the only judgment which is contemplated. The Act provides that the declaration may be filed "at any time before judgment" and that "compensation shall be ascertained and awarded in said proceeding and established by judgment therein."[3] The statute further provides that if the amount of the final award exceeds the deposit, "the court shall enter judgment against the United States for the amount of the deficiency." Subsequent sections of the Act (40 U. S. C. 258d, e) refer

[3] The Declaration of Taking Act provides a procedure which is merely ancillary to the main condemnation proceeding; it is not an independent statute by which land may be condemned. See R. 51; *United States* v. *17.280 Acres of Land, etc.*, 47 F. Supp. 267, 269 (D. Neb.).

to taking possession and title "in advance of final judgment in condemnation proceedings" and the Act is entitled (46 Stat. 1421) "An Act to expedite the construction of public buildings and works outside of the District of Columbia by enabling possession and title of sites to be taken in advance of final judgment in proceedings for the acquisition thereof under the power of eminent domain." Clearly the judgment intended, and the only one referred to in the Act, is the one which adjudicates finally the Government's right to condemn and determines the deficiency due the condemnee or, if the deposit was too high, the amount which should be refunded to the United States. Cf. *United States* v. *Miller*, 317 U. S. 369, 380–382; *Garrow* v. *United States*, 131 F. 2d 724 (C. C. A. 5), certiorari denied, 318 U. S. 765. As in the traditional condemnation proceedings, no appeal will lie until just compensation has been ascertained. *Dade County, Fla.* v. *United States*, 142 F. 2d 230, 231 (C. C. A. 5).

Notwithstanding the foregoing considerations, three circuit courts of appeals have entertained appeals by condemnees in advance of the determination of just compensation, after declarations of taking had been filed and "judgment" had been obtained upon them. *City of Oakland* v. *United States*, 124 F. 2d 959 (C. C. A. 9), certiorari denied, 316 U. S. 679; *United States* v. *243.22 Acres of Land*, 129 F. 2d 678 (C. C. A. 2), certi-

orari denied, 317 U. S. 698; *Puerto Rico Ry. Light and Power Co.* v. *United States,* 131 F. 2d 491 (C. C. A. 1). In the *City of Oakland* case, the absence of a final judgment was adverted to by the Government in its brief upon appeal, but the matter was not discussed by the Circuit Court of Appeals. The question was not raised in the certiorari proceedings. In *United States* v. *243.22 Acres of Land,* the Circuit Court of Appeals for the Second Circuit expressly refrained from deciding that a judgment upon a declaration of taking, such as that here involved, was appealable (129 F. 2d at 683, fn. 16), but held that a subsequent judgment of condemnation, following a hearing, which left the amount of compensation still to be determined was appealable, since the Government would immediately make permanent changes in the property. In the *Puerto Rico Ry. Light & Power Co.* case a judgment entered after similar proceedings was reversed upon the ground that the statutory authority for the taking had been exceeded both procedurally and because of its attempted application to condemn an entire utility system instead of merely realty. The court followed the opinion of the Second Circuit in the view that the conclusive vesting of title and immediate possession in the Government necessitated prompt appellate review.

The mere fact that the Government enters into possession of the condemned property and may

make physical changes immediately after filing a declaration of taking or after "judgment" upon such a declaration is not significant; for the authority to enter into immediate possession has prevailed under previous legislation without giving rise to appeals before final judgment. *Dade County, Fla.* v. *United States,* 142 F. 2d 230, 231 (C. C. A. 5); *United States* v. *Merchants Transfer & Storage Co.,* 144 F. 2d 324 (C. C. A. 9). The Act of August 18, 1890, 26 Stat. 316, as amended by the Acts of July 2, 1917, 40 Stat. 241, and April 11, 1918, 40 Stat. 518, *infra,* pp. 24–25, confers authority in time of war or other emergency to enter immediately into possession, and this statute was invoked in the instant case, possession being taken under it on March 31, 1942, the date the proceeding was begun.[4] The declaration of taking was not filed until November 12, 1942.[5] Hence it was not the judgment on the declaration of taking or the declaration itself which gave the Government possession, as distinguished from title, in the instant case. See *Eline's Inc.* v. *Town of Milwaukee, Wis.,* 135 F. 2d 878 (C. C. A. 7).

[4] Similar authority is conferred by the Second War Powers Act of March 27, 1942, 56 Stat. 177, 50 U. S. C. App., Supp. III, Sec. 632.

[5] The Government's primary purpose in filing declarations of taking in pending condemnation proceedings where it is already in possession is to provide the landowner with some compensation on account, and thus to reduce the interest liability of the United States. See *United States* v. *Miller,* 317 U. S. 369, 381; cf. *United States* v. *1,997.66 Acres of Land, More or Less, etc.,* 137 F. 2d 8 (C. C. A. 8).

The authorities previously cited show, moreover, that the scope of judicial consideration of the issues is not markedly different under the Declaration of Taking Act from that under previous procedures. The Act affords added protection to the landowner if possession has not already been taken by providing in Section 1 that upon the filing of a declaration of taking the court may "fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner." (*Infra*, p. 23.) In any event, neither the courts nor the Government can, for whatever reasons, confer appellate jurisdiction by creating "judgments" which are not "final decisions."

There are strong practical considerations in condemnation cases to support the limitation of appeals to final judgments, concluding the proceedings. Attacks upon the Government's power to condemn have very rarely been successful.[8] To permit appeals from interlocutory orders would

[8] The decision in *Puerto Rico Ry. Light and Power Co. v. United States*, 131 F. 2d 491 (C. C. A. 1) did not result in ousting the Government, because immediately after the decision, the property was taken under the Second War Powers Act. The present petitioners conceded in the court below that the Government could undoubtedly acquire the property here involved for the use in question under the Second War Powers Act (Act of March 27, 1942, 56 Stat. 177, 50 U. S. C. App., Supp. III, 632), which was in effect when the instant proceeding was filed. Therefore, even if the decision below were reversed, possession could be retained by amending the pleadings to invoke specifically the Second War Powers Act.

open the door to such appeals in many cases[7] and produce much unnecessary delay in the entry of final judgments.[8] The result in some instances would be that neighboring witnesses for the landowner and expert witnesses for the Government who saw the property before the improvements were made[9] might become difficult to locate at

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[7] In order to cut down liability for interest and to provide the dispossessed landowner with some money pending the judicial determination of just compensation, it is the practice of the Government to file declarations of taking in most condemnation proceedings, even though the Government is already in possession. See note 5, *supra*.

[8] Examples of this delay are the *243.22 Acres* case and the present controversy. The condemnation petition in the former case was filed in December 1940. The "judgment of condemnation" appealed from was entered January 20, 1942. The Second Circuit's decision sustaining the Government's right to condemn was rendered June 26, 1942. Because of an extension of time the petition for writ of certiorari was not filed until December 7, 1942, and, consequently, certiorari was not denied until January 11, 1943. 317 U. S. 698. Compensation was then determined and the landowner again appealed from the amount awarded. That appeal is still pending. In the instant case the order refusing to vacate the judgment on the declaration of taking was entered on November 30, 1943 (R. 36). The issue of just compensation was to be heard at a trial set for December 20, 1943. On December 9, 1943, petitioners filed their notice of appeal (R. 37), thus necessitating a postponement of the valuation trial. Had they waited another two weeks, all proper issues could have been heard on a single appeal.

[9] Property is valued in its condition on the date of taking of possession or title (whichever is prior in point of time), rather than as of the date of the trial. *United States* v. *Miller*, 317 U. S. 369; *Danforth* v. *United States*, 308 U. S. 271; *United States* v. *Rogers*, 255 U. S. 163, 169.

the time of trial. The landowner would in the meanwhile be deprived of compensation to which he might be entitled beyond the amount deposited with the declaration of taking, and the United States would become liable for interest at six percent upon the additional amount during the period of delay. The prompt disposition of condemnation proceedings is important both to the Government and to landowners. Even when practical considerations point the other way, there is insufficient reason for permitting preliminary and piece-meal appeals, which would evade the Congressional enactment limiting review to "final decisions." *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21, 30.

CONCLUSION

For the foregoing reasons we urge that the judgment of the court below should be affirmed.

The request is made in the petitioners' brief that their contention upon the merits be considered by this Court. It is conceded that this issue was not advanced in the petition for a writ of certiorari (Pet. Br. 11). We respectfully refer to the Government's brief in opposition, pages 16–18, for a statement of our views upon this issue, if the Court should wish to examine the question. The question raised, as we also believe, is of the variety which this Court has held not

to be open to judicial examination. Cf. *supra*, pp. 11–12, 13; *Old Dominion Co.* v. *United States*, 269 U. S. 55, 66–67.

Respectfully submitted.

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JANUARY 1945.

APPENDIX

Section 128 of the Judicial Code, 28 U. S. C. sec. 225 (a) provides:

> The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions—
>
> First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345 of this title.

The Declaration of Taking Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. secs. 258a–258e, provides:

> CHAP. 307. An Act To expedite the construction of public buildings and works outside of the District of Columbia by enabling possession and title of sites to be taken in advance of final judgment in proceedings for the acquisition thereof under the power of eminent domain.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the

petition, declaring that said lands are thereby taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which and the public use for which said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for said public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

SEC. 2. No appeal in any such cause nor any bond or undertaking given therein shall operate to prevent or delay the vesting of title to such lands in the United States.

SEC. 3. Action under this statute irrevocably committing the United States to the payment of the ultimate award shall not be taken unless the chief of the executive department or agency or bureau of the Government empowered to acquire the land shall be of the opinion that the ultimate award probably will be within any limits prescribed by Congress on the price to be paid.

SEC. 4. The right to take possession and title in advance of final judgment in condemnation proceedings as provided by this Act shall be in addition to any right, power,

or authority conferred by the laws of the United States or those of any State or Territory under which such proceedings may be conducted, and shall not be construed as abrogating, limiting, or modifying any such right, power, or authority.

SEC. 5. In any case in which the United States has taken or may take possession of any real property during the course of condemnation proceedings and in advance of final judgment therein and the United States has become irrevocably committed to pay the amount ultimately to be awarded as compensation, it shall be lawful to expend moneys duly appropriated for that purpose in demolishing existing structures on said land and in erecting public buildings or public works thereon, notwithstanding the provisions of section 355 of the Revised Statutes of the United States: *Provided*, That in the opinion of the Attorney General, the title has been vested in the United States or all persons having an interest therein have been made parties to such proceeding and will be bound by the final judgment therein.

Approved, February 26, 1931.

[4]The pertinent portion of the War Purposes Act of August 18, 1890, 26 Stat. 316, as amended by the Acts of July 2, 1917, 40 Stat. 241, and April 11, 1918, 40 Stat. 518, 50 U. S. C. sec. 171, provides:

> The Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed

for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, and for the construction and operation of plants for the production of nitrate and other compounds and the manufacture of explosives and other munitions of war and for the development and transmission of power for the operations of such plants; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted * * *. *And provided further,* That when such property is acquired in time of war, or the imminence thereof, upon the filing of the petition for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes.

U. S. GOVERNMENT PRINTING OFFICE: 1941

SUPREME COURT OF THE UNITED STATES.

No. 419.—October Term, 1944.

Daniel K. Catlin, et al., as Trustees under Deed Dated February 1, 1921, etc., Petitioners,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 26, 1945.]

Mr. Justice Rutledge delivered the opinion of the Court.

The proceeding is for the condemnation of land in Madison County, Illinois, under the War Purposes Act of 1917.[1] The question for review is whether orders entered in the course of the proceedings are appealable as "final decisions" within the meaning of Section 128 of the Judicial Code, as amended, 28 U. S. C. §225(a).[2]

The petition for condemnation was filed in the District Court March 31, 1942. The same day an order for immediate possession was entered ex parte. On November 12, 1942, pursuant to the

[1] Act of August 18, 1890, 26 Stat. 316, as amended by the Acts of July 2, 917, 40 Stat. 241, and April 11, 1918, 40 Stat. 518, 50 U. S. C. § 171. The Act provides:

"That hereafter the Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed *for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, and for the construction and operation of plants for the production of nitrate and other compounds and the manufacture of explosives and other munitions of war and for the development and transmission of power for the operations of such plants;* such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted. . . . And provided further, That when such property is acquired in time of war, or the imminence thereof, *upon the filing of the petition* for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, *immediate possession thereof may be taken* to the extent of the interest to be acquired and the *lands may be occupied and used for military purposes.* . . ." (Emphasis added.)

[2] Section 128 is in part as follows:

"The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions—

"First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345 of this title."

Declaration of Taking Act of February 26, 1931,[3] the Secretary of War filed a declaration and deposited in court $43,579.00 as the estimated compensation for Tract ED-7, to which petitioners assert ownership as trustees. The court thereupon entered "judgment," likewise ex parte, decreeing that title had vested in the United States upon the filing of the declaration and making of the deposit, also declaring the right of just compensation "now vested in the persons entitled thereto," and holding the cause open for further "orders, judgments and decrees."

Thereafter, on August 2, 1943, an order for service of process by publication was entered, and in October following petitioners moved to vacate the "judgment" and to dismiss the petition as to Tract ED-7. After this the Government amended its petition[4] and petitioners filed an amended motion to vacate and dismiss[5] which the court denied. From this order and the order entering the "judgment" on the declaration of taking, petitioners appealed. The Circuit Court of Appeals held the orders not final decisions within Section 128 and dismissed the appeal. 142 F. 2d 781. We granted certiorari, 323 U. S. —, in order to resolve conflict upon this question among several Circuit Courts of Appeals.[6]

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[3] 46 Stat. 1421, 40 U. S. C. §§ 258a-258e. Material portions of the statute are set forth in the text of this opinion and the notes.

[4] Petitioners attacked the original petition for failure to set forth (1) the purpose of the acquisition or that it was for any purpose authorized by the act; (2) that the Secretary of War had found that the land was needed or (3) had requested the Attorney General to institute the proceeding to acquire it for such a purpose. Considering these objections jurisdictional, petitioners regard "all further proceedings based upon the said petition" as "ineffective," including the filing of the first declaration of taking and the "judgment" entered pursuant to it.

The amendment added a new paragraph to the petition stating the lands were being taken for purposes described in the language of the statute and incorporated in the petition the letter of the Secretary of War requesting the Attorney General to institute the proceedings to acquire the land "for use in the establishment of the Granite City Engineer Branch Depot." This is the specific purpose which petitioners say does not come within any set forth in the statute, for which see note 1.

[5] The amended motion urged that the amendment of the petition, by incorporating the Secretary's statement of intended use for an engineer depot, caused the petition to show on its face that the use was not within those authorized by the act. Petitioners assert the amendment "came too late to validate" the "judgment."

[6] Dade County, Fla. v. United States, 142 F. 2d 230 (C. C. A. 5), accords with the decision in this case. Contrary decisions were rendered in City of Oakland v. United States, 124 F. 2d 959 (C. C. A. 9), cert. denied, 316 U. S. 679; United States v. 243.22 Acres of Land, 129 F. 2d 678 (C. C. A. 2), cert.

We think the judgment was right. Petitioners' motions raised issues grounded in contentions that the taking was not for a purpose authorized by the War Purposes Act.[7] Accordingly they urged that neither petition stated a cause of action, the court acquired no jurisdiction of the cause or to enter the order relating to title, and it was error to deny the motion to vacate and to dismiss. Since the issue here is whether the orders are final for purposes of appeal, we assume, though we do not decide, that the substantive issues have sufficient merit to warrant determination upon review. Even so, we think petitioners have mistaken their remedy.

Their right to appeal rests upon Section 128 of the Judicial Code. This limits review to "final decisions" in the District Court. A "final decision" generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. *St. Louis I. M. & S. R. R.* v. *Southern Ex. Co.*, 108 U. S. 24, 28. Hence, ordinarily in condemnation proceedings appellate review may be had only upon an order or judgment disposing of the whole case, and adjudicating all rights, including ownership and just compensation, as well as the right to take the property. This has been the repeated holding of decisions here.[8] The rule applies to review by this Court of judgments of state courts, in advance of determination of just compensation, although by local statute "judgments of condemnation," i. e., of the right to condemn particular property, are reviewable before compensation is found and awarded. *Wick* v. *Superior Court*, 278 U. S. 574, 575; *Public Service Co.* v. *Lebanon*, 305 U. S. 558, 571; cf. *Dieckmann* v. *United States*, 88 F. 2d 902. The foundation of this policy is not in merely technical conceptions of "finality." It is one against piecemeal litigation. "The case is not to be sent up in fragments. . . ." *Luxton* v. *North*

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denied, 317 U. S. 698; Puerto Rico Ry. Light & Power Co. v. United States, 121 F. 2d 491 (C. C. A. 2).

Under the comparable provision of the 1929 act applicable in the District of Columbia, where special appeal may be allowed upon interlocutory orders, D. C. Code (1940) § 17-101, compare Lee v. United States, 58 F. 2d 879, with Keye v. United States, 119 F. 2d 444.

[7] See notes 1, 4 and 5.

[8] Luxton v. North River Bridge Co., 147 U. S. 337, 341; Southern Ry. v. Postal Telegraph Co., 179 U. S. 641, 643; Grays Harbor Co. v. Coats-Fordney Co., 243 U. S. 251, 256; Washington *ex rel.* McPherson Bros. Co. v. Superior Court, 274 U. S. 726; Ornstein v. Chesapeake & Ohio Ry., 284 U. S. 572; cf. Collins v. Miller, 252 U. S. 364, 370; United States v. Florian, 312 U. S. 656.

River Bridge Co., 147 U. S. 337, 341. Reasons other than conservation of judicial energy sustain the limitation. One is elimination of delays caused by interlocutory appeals.

The rule applies to proceedings under the War Purposes Act of 1917.[9] That act does not purport to change or depart from the generally prevailing rule concerning appeals in condemnation proceedings. It is an amended version of the 1890 act, under which from its enactment to now that rule has been applied; except in the three decisions of Circuit Courts of Appeals reaching the contrary result, where however the Declaration of Taking Act of 1931 also was involved.[10] The 1917 act purports to authorize no judgment except one "for the acquirement by condemnation of any land," etc., for the purposes specified or, necessarily, one finally denying this. The provision for the proceedings "to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted . . ." had no purpose to make the right of appeal in such proceedings depend upon and vary with the local procedure in this respect, cf. *Wick* v. *Superior Court, supra*; *Public Service Co.* v. *Lebanon, supra*, or to incorporate local ideas of "finality" in the application of Section 128 to such suits. The language may be applied in other ways without introducing so much lack of uniformity into the application of Section 128, if indeed the quoted provision has not been largely nullified by the Federal Rules of Civil Procedure in all respects concerning appeals.[11]

Furthermore, the 1917 act contemplated emergency action, to the extent that upon the filing of the petition immediate possession might be taken and the lands occupied "for military purposes" during war "or the imminence thereof." This purpose,

[9] No case has been found in which appeal was taken, or attempted to be taken, under the 1890 and 1917 acts, from an order other than the final judgment disposing of all issues raised in the proceeding, including compensation. The uniform practice under those acts appears to have been therefore to confine appeals to such orders. Only three cases appear to have sought to raise, in appeals from final judgments, the question of the right to condemn. See Forbes *v.* United States, 268 Fed. 273; Chappell *v.* United States, 81 Fed. 764, 160 U. S. 499; Henry *v.* United States, 46 F. 2d 640. Numerous other cases involved appeals on questions affecting compensation without raising question concerning title or authority to condemn.

[10] Cf. note 6 and text beginning with the paragraph following note 12.

[11] "In proceedings for condemnation of property under the power of eminent domain, these rules govern appeals but are not otherwise applicable." Rule 81(a)(7).

it seems clear, would be largely defeated, if entry must be deferred until specific challenges to jurisdiction and the sufficiency of the petition are determined seriatim, not only by ruling of the trial court but by separate appeals from each ruling which, if sustained,[12] would end the litigation, but if lacking in merit could only prolong it. We find neither in the language nor in the purposes of the 1917 act an intent to authorize departure from the general course of applying Section 128 in condemnation proceedings.

Indeed, we do not understand petitioners to urge that the 1917 act without more accomplishes the departure. They say rather that it does so when used in conjunction with the Declaration of Taking Act of 1931. It is the "judgment upon a declaration of taking" and the subsequent order denying their motion to vacate this "judgment" and to dismiss the proceedings which they contend are "final decisions" within Section 128 and therefore appealable. It is "judgments" of this character which the decisions of Circuit Courts of Appeals, upon which petitioners rely, have involved. One of them relied expressly upon the 1931 act as being intended "to sever the taking of title and possession from controversies as to valuation, and to provide a procedure whereby the United States might be speedily and conclusively vested with title and possession" and therefore as having a "final and immediate effect on property rights" which "obviously should be reviewable at once, without the necessity of awaiting the outcome of long drawn out controversies as to valuation." *Puerto Rico Ry. Light & Power Co.* v. *United States*, 131 F. 2d 491, 494. The reason stated might afford ground for Congress to provide a special appeal. However, we do not think the reason accords with the statute's provisions or their effect. Consequently it gives no ground for believing that Congress has provided a separate appeal.

We dispose shortly of the motion, or that part of it, which was directed at dismissal of the proceedings, in so far as it may require treatment separately from the motion to vacate the "judgment," if it does so at all. Had this motion been granted and judgment of dismissal been entered, clearly there would have been an end of the litigation and appeal would lie within Section 128. *United States* v. *Carey*, 143 F. 2d 445; *United States* v. *Marin*, 136 F. 2d 388. But denial of a motion to dismiss, even when the motion

[12] See United States v. Carey, 143 F. 2d 445; United States v. Marin, 136 F. 2d 388.

is based upon jurisdictional grounds, is not immediately reviewable. Cf. *Roche* v. *Evaporated Milk Ass'n*, 319 U. S. 21. See also *Dieckmann* v. *United States*, 88 F. 2d 902. Certainly this is true whenever the question may be saved for disposition upon review of final judgment disposing of all issues involved in the litigation or in some other adequate manner. As will appear, we think such a remedy is available in this case.

The "judgment" and the order denying the motion to vacate it stand no better. The 1931 act, like that of 1917, contains no language purporting to change the general rule relating to appeals in condemnation proceedings. Section 1, which is the basic section, makes no express reference to appeals.[13] Section 2 implies the

[13] Because of its importance, the Section is set forth here in full, except for the concluding paragraph which is quoted in note 14:

"An Act *To expedite the construction of public buildings and works* outside of the District of Columbia *by enabling possession and title* of sites *to be taken in advance of final judgment* in proceedings for the acquisition thereof under the power of eminent domain.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That *in any proceeding* in any court of the United States outside of the District of Columbia which has been or may be *instituted* by and in the name of and under the authority of the United States *for the acquisition of any land* or easement or right of way in land for the public use, *the petitioner may file in the cause*, with the petition or at any time before judgment, *a declaration of taking* signed by the authority empowered by law to acquire the lands described in the petition, *declaring that said lands are thereby taken* for the use of the United States. Said declaration of taking shall contain or have annexed thereto—

"(1) A statement of the authority under which and the public use for which said lands are taken.

"(2) A description of the lands taken sufficient for the identification thereof.

"(3) A statement of the estate or interest in said lands taken for said public use.

"(4) A plan showing the lands taken.

"(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

"*Upon the filing said declaration of taking and of the deposit in the court*, to the use of the persons entitled thereto, *of the amount of the estimated compensation* stated in said declaration, *title to the said lands* in fee simple absolute, or such less estate or interest therein as is specified in said declaration, *shall vest in the United States of America, and said lands shall be deemed to be condemned* and taken for the use of the United States, *and the right to just compensation for the same shall vest in the persons entitled thereto*, and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

"Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for

contrary effect. It provides: "No appeal in any such cause nor any bond or undertaking given therein shall operate to prevent or delay the vesting of title to such lands in the United States." While the section does not in terms deny the right of appeal contended for, neither does it confer that right. The possibility of delaying or preventing the vesting of title by appeals was explicitly in the mind of Congress, when it included this section. If it had thought granting an earlier appeal than the existing procedure allowed, upon the severed issue of the right to take the property, would expedite the taking or the vesting of title or the proceedings in any other manner, slight additional words would have made provision for such an appeal. The omission, and the clear import of the language used, are against the implication that separate appeals were to be allowed.

This seems reinforced by Section 4. It makes the right to take possession and title "in advance of final judgment" *additional* to other rights, powers or authority conferred by federal or local law, and expressly states that this right "shall not be construed as abrogating, limiting, or modifying any such right, power, or authority." One of the rights of the Government under pre-existing federal law was the right not to have the proceeding, or the taking of possession,[14] delayed by separate appeals over issues of title or taking.[15] Its right was rather to have these issues determined with others in the final judgment dispositive of the whole cause. This right, we think, was guarded by Section 4 against being construed as having been abrogated, limited or modified, by virtue of the *additional* right conferred "to take possession and title *in advance of final judgment.*" (Emphasis added) Other provisions of the statute, as will appear, support the same conclusion.

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or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency." (Emphasis added.)

[14] This was authorized by the Act of 1917, cf. note 1 above, as well as by the Act of 1931 in the concluding paragraph of Section 1, which is as follows:

"Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable."

[15] See note 9.

Moreover, the statute does not purport in terms to authorize such a "judgment" as was entered in this cause or to make its entry the event upon which title is changed, if so summary a procedure could be valid. The "judgment" apparently was entered ex parte, prior to service of process or publication of notice. Cf. *Pennoyer* v. *Neff*, 95 U. S. 714. By the terms of Section 1, "Upon the filing said declaration of taking [in the condemnation proceeding] and of the deposit in the court . . . title . . . shall vest in the United States . . . and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein. . . ."[16]

The exact effect of these provisions is not entirely clear. But we find nothing in the statute to indicate that Congress intended to deprive the owner of all opportunity to challenge the validity of the taking for departure from the statutory limits. Such a purpose cannot be implied from the provision for transfer of title itself and the fact that the specific references to the final judgment in Section 1 speak only concerning compensation. Those references, we think, are counterbalanced by other provisions and considerations, in so far as they may be thought to exclude matters of title from the final adjudication.

We think the purpose was to leave intact the owner's remedy existing before the statute was adopted. For one thing, the statute is not an independent one for condemnation. It provides for no new condemnation proceeding. It merely affords steps ancillary or incidental to suits brought under other statutes; and was so used in this case in conjunction with the suit brought under the Act of 1917. Its declared purpose is to expedite, in the cases to which it applies, the construction of public buildings and works "by enabling possession and title of sites to be taken *in advance of final judgment* in proceedings for the acquisition thereof under the power of eminent domain," (emphasis added) as the title states, and it applies to "any proceeding . . . instituted . . . under the authority of the United States for the acquisition of any land . . . for the public use. . . ." Section 1. The procedure clearly is ancillary to the main condemnation pro-

[16] See note 13 for the complete text.

eeding, cf. *United States*, v. *17,280 Acres of Land*, 47 F. Supp. 67, 269, is intended to dovetail with it and by Section 4 is declared expressly to provide rights which are to be "in addition to" preexisting rights and are not to "be construed as abrogating, limiting, or modifying" them. This provision, inserted primarily to safeguard the Government's interest, is not expressly so limited; and we think it may be applied also to safeguard the owner's preexisting rights where doing this will not be in essential conflict with the additional rights validly conferred on the Government. This would be done by preserving his preexisting right of appeal.

While the language and the wording of the act are not wholly free from doubt, we see no necessary inconsistency between the provisions for transfer of title upon filing of the declaration and making of the deposit and at the same time preserving the owner's preexisting right to question the validity of the taking as not being for a purpose authorized by the statute under which the main proceeding is brought. That result may be reached if the statute is construed to confer upon the Government, upon occurrence of the events specified, only a defeasible title in cases where an issue concerning the validity of the taking arises. So to construe the act would accomplish fully the purposes for which it was adopted in the large number of cases where no such issue is made. In others this would go far toward doing so, for not all such issues will be followed through to final decision or, if so followed, will turn out adversely to the Government. The alternative construction, that title passes irrevocably, leaving the owner no opportunity to question the taking's validity or one for which the only remedy would be to accept the compensation which would be just if the taking were valid, would raise serious question concerning the statute's validity. In any event we think it would run counter to what reasonable construction requires.

Some stress is placed upon the provisions of Sections 3 and 5 relating to irrevocable commitment of the United States to pay the amount ultimately to be awarded,[17] together with the pro-

[17] Section 3 is set forth in note 18. Section 5 is as follows:

"In any case in which the United States has taken or may take possession of any real property during the course of condemnation proceedings and in advance of final judgment therein and the United States has become irrevocably committed to pay the amount ultimately to be awarded as compensation, it shall be lawful to expend moneys duly appropriated for that purpose in demolishing existing structures on said land and in erecting public buildings

vision of Section 1 authorizing award of more than the amount deposited as estimated compensation, as indicating a purpose to make the transfer of title irrevocable upon the filing of the declaration and the making of the deposit.[18] From the fact that the Government may become irrevocably committed to pay, it does not follow that the owner is irrevocably committed to submit to the taking, since the statute's terms are not *in pari materia* in this respect. Neither Section 3 nor Section 5 purports to bind the owner irrevocably. On the contrary, Section 5 deals only with authority to expend appropriated funds for demolition of existing structures and construction of new ones; and the concluding proviso, requiring the opinion of the Attorney General that "title has been vested in the United States or all persons having an interest therein have been made parties to such proceeding and will be bound *by the final judgment therein,*" (emphasis added) before the funds are expended, seems clearly to contemplate that title is not indefeasibly vested in the United States merely by following the administrative procedure. Final judgment in "such proceeding," that is, the main condemnation suit, is necessary for that purpose. The operation of Sections 3 and 5 is to cut off the Government's right to abandon the proceedings. It is not to compel the owner to submit to unauthorized takings.

Accordingly, in our opinion the right of the owner to challenge the validity of the taking, for nonconformity with the prescribed statutory purposes, was not destroyed by the 1931 act. Nor was the right to do this upon appeal, existing before that act was adopted, affected. No such "severance" was made as the court deciding the *Puerto Rico* case thought was created. No new right of separate appeal was given. The preexisting right of appeal, including appeal on grounds relating to validity of the taking, remained in force to be exercised when and only when final judgment, disposing of the cause in its entirety, has been

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or public works thereon, notwithstanding the provisions of section 355 of the Revised Statutes of the United States: Provided, That in the opinion of the Attorney General, the title has been vested in the United States or all persons having an interest therein have been made parties to such proceeding and will be bound by the final judgment therein."

[18] Including or following the finding required by Section 3, which provides: "Action under this statute irrevocably committing the United States to the payment of the ultimate award shall not be taken unless the chief of the executive department or agency or bureau of the Government empowered to acquire the land shall be of the opinion that the ultimate award probably will be within any limits prescribed by Congress on the price to be paid."

rendered. The statute makes no other explicit provision. Nor is one so clearly implied that we can make it. The weightier implications are the other way.

We have not discussed other issues presented or suggested in the briefs or argument, since that has not been necessary to the disposition of this cause. These include the question whether, when possession has been taken and damage has been done to the premises in the course of proceedings not authorized, the remedy by appeal is adequate. That issue has not been made in this case, since the grounds urged rest upon the provisions of the 1931 act relating to title and their effect, through the proceedings had, upon the petitioners right. They do not relate simply to the taking of possession, the right to take it or damages resulting from exercise of that right, apart from the question of title. Possession in this case had been taken, pursuant to the terms of the 1917 act, prior to the time of the purported transfer of title. It will be time enough to consider the question concerning adequacy of the appeal or possible existence of other remedy affecting such a case when it arises.

The judgment is

Affirmed.

Mr. Justice ROBERTS and Mr. Justice DOUGLAS concur in the result.